

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Tuesday, September 4, 2007

Division Five

**A114055 – The People v. Shannon Michael Thomas.**

The judgment of conviction is affirmed. The matter is remanded to the trial court with instructions to correct the record of the judgment of conviction to list only the three offenses of which appellant stands convicted, as set forth in this opinion. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A110999 – The People v. Salvador Quiroz.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Wednesday, September 5, 2007

Division One

**A116834/A116851 – State Route 4 Bypass Auth. V. Superior Court of Contra Costa; Toshiko Morimoto, R.P.I.**

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

**A113794 – The People v. Larry Redic.**

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

Division Two

**A115847 – In re the Marriage of Loyal A. Davis and Jennifer Ives. Frank E. Dougherty v. Sonoma County Superior Court.**

The appeal is dismissed and, for the reasons stated above, appellant is sanctioned \$1,000 payable to the clerk of this court. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Four

**A116068 – In re Brandon S., a Person Coming Under the Juvenile Court Law. The People v. Brandon S.**

The order is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A116471 – The People v. Arthur Stewart, Jr.**

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A110285 – The People v. Eddie Rapoza.**

By the Court: The petition for rehearing is denied. Ruvolo, P.J.

**A116529 - In re Johnathan L., a Person Coming Under the Juvenile Court Law. The People v. Johnathan L.**

The judgment is affirmed. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Wednesday, September 5, 2007 (continued)

Division Five

**A115027 – Karuk Tribe of California et al. v. California Department of Fish and Game et al., The New 49'ers, Inc., et al., Walter H. Eason, Jr.**

The order denying appellant's motion to intervene is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

Thursday, September 6, 2007

Division One

**A115031 – Ramiro Garcia Sanchez et al. v. Ben A. Begier Co., et al.**

**A115547 – Ramiro Garcia Sanchez et al. v. Ben A. Begier Co.**

The judgment and order denying attorney fees are affirmed. Each side is to bear its own costs and attorney fees on appeal. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A116672 – The People v. Sontrail Copeland.**

In sum, we have thoroughly reviewed the record and find no arguable issues. There are no issues requiring further briefing. The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A117712/A117713 – Michael K. and Dolly R. v. The Superior Court of Humboldt County; Humboldt County Department of Health & Human Services, Social Services Branch, R.P.I.**

The petition for extraordinary relief is denied on the merits. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.264(b)(3).) Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A112657 – Brenda James v. Bank of America, National Association.**

The summary judgment for the Bank is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Four

**A118676 – In re Luis Murry, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is granted. The notice of appeal filed May 24, 2007, shall be deemed timely filed. The appeal shall proceed under appeal number A117950. The Clerk of the Contra Costa County Superior Court is directed to prepare the record on appeal in People v. Luis Murry, Contra Costa Superior Court Case Number 05-060197-1. This decision shall be final as to this court immediately.

The clerk of this court shall file a copy of this decision in number A117950. Before Ruvalo, P.J., Sepulveda, J., Rivera, J. (Not for Publication.)

Thursday, September 6, 2007 (continued)

Division Five

**A111214 – Fidelity and Guaranty Insurance Company v. German Motors Corporation dba BMW of San Francisco, a California corporation, et al.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Friday, September 7, 2007

Division Three

**A116610 – In re Athena H., et al., Persons Coming Under the Juvenile Court Law.  
Lake County Department of Social Services v. Cynthia H.**

The order is reversed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A114159 – The People v. Eric Jason Floyd.**

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A116035 – The People v. Todd Fisher.**

Accordingly, we affirm the judgment. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Monday, September 10, 2007

Division One

**A115424 – In re Ryan W., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau v. Robin S.**

The jurisdictional and dispositional orders are affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A116720 – The People v. Kevin M. Anthony.**

The judgment is modified to indicate conviction for a violation of section 136.1, subdivision (b)(1), rather than one for a violation of section 186.1. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver it to the Department of Corrections. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

Division Three

**A113915 – The People v. Timothy McKnight.**

The appeal is dismissed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A115596 – In re Jason O., a Person Coming Under the Juvenile Court Law. The People v. Jason O.**

The juvenile court's dispositional order is affirmed. Horner, J.\* We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Monday, September 10, 2007

Court convened at 9:30 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., E. Cyman, Deputy Clerk.

A117816     Silicon Valley Community Foundation,  
                 v.  
                 Beltran.

Cause called. Silicon Valley Community Foundation, appellant, and Keith Bartel, counsel for appellant, appeared in response to an order to show cause issued by this court on August 28, 2007 for failure to appear at a mediation session on August 27, 2007. Cause ordered submitted.

Tuesday, September 11, 2007

Division One

**A113031 – The People v. Anthony Rashawn Denard.**

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A114126 – The People v. Chalee Wilson.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

**A114598 – John Hsu v. California Department of Personnel Administration;  
California Department of Toxic Substances Control.**

The appeal is dismissed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

**A115779 – Rebecca T. Shumye v. Samuel D. Felleke.**

The appeal is dismissed. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A116197 – Tiffany Cooper v. County of Sonoma.**

The order is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

Wednesday, September 12, 2007

Division One

**A115718 – The People v. William D. Carver.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A106273 – The People v. Samuel F. Tewolde.**

The judgment and sentenced are affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A113344 – Raymond A. Chamberlin v. City of Berkeley, City of Albany.**

By the Court: It is ordered that the opinion filed herein on August 14, 2007, be modified as follows: (See order.) Plaintiff's petition for rehearing is denied. Stein, Acting P.J. (Not for Publication.)

Division Two

**A116620 – The People v. Scott William Davis.**

Our independent review of the record reveals no arguable issues. Accordingly, the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A114633 – Angel Batt v. City and County of San Francisco.**

The order is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

**A116094 – In re Devon M., a Person Coming Under the Juvenile Court Law. Napa County Department of Health and Human Services v. James M.**

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

**A116697 – The People v. Eric William Olden.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, September 12, 2007

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Siggins, J., and Horner, J., pro tem; and B. Robbins, Deputy Clerk.

A115466     Liza Lasser,  
              v.  
              City and County of San Francisco, et al.;  
              International Business Machines Personal Pension Plan, et al.  
Cause called and argued by John Scott, counsel for appellant; Rafal Ofierski, counsel for respondent CCSF, et al.; and Robert W. Fischer, counsel for respondent International Business Machines Personal Pension Plan, et al. Cause ordered submitted.

A112065     The People,  
              v.  
              Allie James Bell.  
Cause called and argued by L. Richard Braucher, counsel for appellant, and Catherine A. Rivlin, counsel respondent. Cause ordered submitted.

A114120     County of Solano,  
              v.  
              Paul Handlery.  
Cause called and argued by Jonathan R. Bass, counsel for appellant, and Steven Ingram, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Pollak joined the bench. Justice Horner left the bench.

A115366     Tomales Bay Association,  
              v.  
              County of Marin, et al.  
Cause called and argued by Michael W. Graf, counsel for appellant; Barry H. Epstein, counsel for respondent Weber; David L. Zaltsman, counsel for respondent County of Marin; and Patricia S. Peterson, counsel for respondent California Coastal Commission. Cause ordered submitted.

A111217     Lake Berryessa Enterprises, Inc.  
A112128     v.  
              Robert W. Petty, et al.

Causes called and argued by Malcolm A. MacKenzie, counsel for appellants, and Douglas N. Smith, counsel for respondent. Causes ordered submitted.

At this point in the proceedings, Justice Horner returned to the bench and Justice Siggins left the bench.

A115733    The People,  
              v.  
              Stacey Lorraine Frost.  
Cause called and argued by Syda Kosofsky, counsel for appellant, and Ronald Niver, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuinness left the bench and Justice Siggins returned to the bench. Justice Pollak presided over the remainder of the morning calendar.

A112477    The People,  
              v.  
              Chris Thomas Gilbreth,  
Cause called and argued by Donald T. Bergerson, counsel for appellant, and Gregg E. Zywicke, counsel for respondent. Cause ordered submitted.

A116262    Regina Birkner, et al.,  
              v.  
              Kwai Ho Lam.  
Cause called and argued by Paul F. Utrecht, counsel for appellant, and Stephen Collier, counsel for respondents. Cause ordered submitted.

Court Recessed Until 1:30 p.m.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, September 12, 2007

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Siggins, J., and Horner, J, pro tem, and P. Acosta, Deputy Clerk.

A116768    The People,  
              v.  
              William Edward Preston May.  
Cause called and argued by Rudolph Kraft, counsel for appellant, via teleconference, and Jill Thayer, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Pollak joined the bench. Justice Siggins remained in the courtroom but was not on the panel for the next case and did not participate in argument.

A112910    The People,  
              v.  
              Salvador Estrada.  
Cause called and argued by Marylou Hillberg counsel for appellant, and John Vance, counsel for respondent. Cause ordered submitted.

A112909    The People,  
              v.  
              David Angel Calderon.  
Argument waived. Cause ordered submitted

At this point in the proceedings, Presiding Justice McGuiness left the bench. Justice Pollak presided over the remainder of the afternoon session.

A116156    Friends of Garrity Creek,  
              v.  
              County of Contra Costa et al.;  
              Brilliant Management.  
Cause called and argued by Michael Graf counsel for appellant, Linda Wilcox counsel for respondent, and Joshua Safran counsel for Real Party in Interest. Cause ordered submitted.

A116420    Jacqueline Thornborrow,  
              v.  
              Alameda County Child Protective Services.

Cause called and argued by Steve Ajalat, counsel for appellant, and Rebecca Widen, counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED**

Wednesday, September 12, 2007 (continued)

Division Four

**A118344 – Antonio J. v. The Superior Court of San Francisco County; San Francisco Department of Human Services, R.P.I.**

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (I).) Our decision is final in this court immediately. (Cal. Rules of Court, rule 8.264(b)(3).) Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A113370 – In re Alfred William Roderick, on Habeas Corpus.**

By the Court: The petition for rehearing filed by Alfred William Roderick on September 5, 2007, is denied. The majority opinion filed herein on August 17, 2007, is ordered modified as follows: (See order.) There is no change in the judgment. Ruvolo, P.J. (Certified for Publication.)

Division Five

**A117015 – The People v. Gary Kobrofsky.**

The judgment of conviction is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, September 13, 2007

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and F. Abad, Deputy Clerk.

Justice Stein announced that Justice Margulies would not be present for oral argument. The justices read the briefs, counceled the case, and Justice Margulies will have the opportunity to hear the case. Counsel proceeded with oral argument

A115807 People,

v.

Michael Hoisington.

Cause called and argued by Jeremy Price, counsel for appellant, and Martin Kaye, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, September 13, 2007

The Court reconvened at 1:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J., and F. Abad, Deputy Clerk.

Justice Marchiano announced that Justice Margulies is on the panel with himself and Justice Swager. Justice Margulies is unavoidably away for oral argument. The panel conferenced the cases, did independent research, read the briefs in detail, and looked at the record. The parties stipulated to the absence of Justice Margulies.

- A116802    People,  
              v.  
              William LaSalle.  
Cause called and argued by Robert Condie, counsel for appellant, and Christina Vom Saal, counsel for respondent. Cause ordered submitted.
- A117646    City of Oakland,  
              v.  
              Superior Court of Alameda County;  
              Clarence Mabanag, et al.  
Cause called and argued by Joseph Quinn, counsel for petitioner, Alison Wilkinson, counsel for real party Clarence Mabanag, argued for both real parties in interest, and William Rapoport, counsel for real party Jude Siapno, appeared but did not argue. Cause ordered submitted.
- A114680    Fang,  
              v.  
              Dolch.  
Cause called and argued by Mary Mix, counsel for appellant, Andrew Zubronsky, counsel for respondent James Chen, and Ernest Der, counsel for respondent Debra Dolch. Cause ordered submitted.

Court adjourned until Friday, September 14, 2007 at 9:00 a.m.

Thursday, September 13, 2007

Division Two

**A112664 – The People v. Ralph Olmedo.**

**A115376 – In re Ralph Olmedo, on Habeas Corpus.**

The judgment is affirmed. The petition for writ of habeas corpus is denied. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Four

**A114359 – The People v. Antonio Woods.**

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A116338 – Frank Morrow, Jr. v. City of Oakland et al.**

The judgments are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

**A114360 – The People v. Dion McNeally.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Friday, September 14, 2007

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice and Mary Quilez, Deputy Clerk.

A112560a Jessica Grinberg,

nd v.

A113771 Van Phillips.

Cause called and argued by Robert Roth, counsel for appellant and Elliot Bien, counsel for respondent. Cause ordered submitted.

A113901 Jason Heilig,

A114413 v.

and Touchstone Climbing, Inc.

A116162 Cause called and argued by Andrew W. Shalaby, counsel for appellant, and by Michael R. Reynolds, counsel for respondent. Cause ordered submitted.

A116081 Mui Ung,

v.

Henry Koehler.

Cause called and argued by Daniel McLoughlin, counsel for appellant and Alexander Bannon, counsel for respondent. Cause ordered submitted.

Court adjourned.

Friday, September 14, 2007

Division Three

**A116477 – The People v. Charles Alfred Glasper.**

By the Court: On the court's own motion, the opinion in this matter filed August 22, 2007, is vacated, and the matter is ordered reheard to permit consideration of appellant's supplemental brief received by this court on September 5, 2007. McGuiness, P.J.

Division Four

**A117418 – The People v. Hubert Haze Woods, Jr.**

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A117438 – Phillip E. Makin, Sr. v. Michael Cohen, Sr.**

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A113516 – C.M., a Minor, etc. v. Park Management Corporation et al.**

The judgment is affirmed. Costs to respondents. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A115765 – In re Damien B., a Person Coming Under the Juvenile Court Law. The People v. Damien B.**

The disposition order is affirmed. Gemello, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Monday, September 17, 2007

Division Two

**A112633 – The People v. Robert Oldham, Jr.**

**A117067 – In re Robert Oldham, Jr.**

The judgment is affirmed and the writ of habeas corpus is denied. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A111188 – The People v. James Edward Walker.**

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

**A113547/A114389 – Donald Carmignani et al. v. Kenneth A. Paganini et al.**

The appeal of defendants Kenneth Paganini and William Spencer is dismissed. The judgment against defendant Jannine Paganini and Claire Spencer is reversed and the matter is remanded to the trial court for further proceedings in conformity with this opinion. The parties shall bear their respective costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A112909/A112910 – The People v. David Angel Calderon et al.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

**A115733 – The People v. Stacey Lorraine Frost.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, September 18, 2007

Division One

**A114276 – The People v. Darryl Eugene Randle.**

The judgment is modified to reduce the \$3,200 restitution fine imposed to \$200, and to reduce the stayed parole revocation fine to the same amount, as required by section 1202.45. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a copy of the amended abstract of judgment to the California Department of Corrections. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A113937 – Dianne Urhausen v. Longs Drug Stores California, Inc. et al.**

The trial court's judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

Division Two

**A115727 – The People v. Dwayne Michael Heard.**

The judgment and sentenced imposed are affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

**A117170 – The People v. Jesse Allen Cullen.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A116156 – Friends of Garrity Creek v. County of Contra Costa et al.; Brilliant Management, LLC, R.P.I.**

The judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. Friends shall recover its costs on appeal. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, September 18, 2007 (continued)

Division Four

**A116602 – In re the Marriage of George Kulya and Susanna Reyngach. George Kulya v. Susanna Reyngach.**

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A118720 – In re K.F. and W.F., Persons Coming Under the Juvenile Court Law. Jerry F. v. The Superior Court of San Mateo County.**

The request for stay is denied, and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894 [subsequent appeal challenge barred].) The decision is final in this court immediately. (Rule 8.264(b)(3).) Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Tuesday, September 18, 2007

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Gemello, J., Needham, Jr., J., R. Sandvik and E. Cyman, Deputy Clerks.

A114983     Brimer,  
                 v.  
                 Faygo Beverages Inc. et al.  
Cause called and argued by David Scott Lavine, counsel for appellant, and by Stephen M. Caine, counsel for respondent. Cause ordered submitted.

A114995     Associated Reproduction Services Inc.,  
                 v.  
                 Carcione.  
Cause called and argued by Aaron Benjamin Markowitz, counsel for appellant, and by Allen Kent Brown, counsel for respondent. Cause ordered submitted.

A114241     Roa,  
                 v.  
                 Department of Justice.  
Cause called and argued by Gary Steven Garfinkle, counsel for appellant, and by Lyn Harlan, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Gemello left the bench and Justice Needham entered.

A110506     The People,  
                 v.  
                 Leonce.  
Cause called and argued by Eric Stephen Multhaup, counsel for appellant, and by Sharon Wooden, counsel for respondent. Cause ordered submitted.

A115448     The People,  
                 v.  
                 Juan Bernal.  
Cause called and argued by Kari E. Hong, counsel for appellant, and by Michael Banister, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons left the bench and Justice Gemello entered.

113201      The People,  
                 v.  
                 Peter Navarro.  
                 Cause called and argued by Charles M. Bonneau Jr., counsel for appellant, and by Gregg Zywicke, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Gemello left the bench and Justice Simons entered.

A113883      Sagonowsky,  
A116818      v.  
                 Kekoa.  
                 Cause called and argued by Curtis Kekoa, appellant, and by Christina Sagonowsky, respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Gemello entered.

A116774      Fields,  
                 v.  
                 Perkins.  
                 Cause called and argued by Jonathan S. Chase, counsel for appellant, and by Omar Julian Krashna, counsel for respondent. Cause ordered submitted.

Court recessed at 12:18 p.m.

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Tuesday, September 18, 2007

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Gemello, J., Needham, Jr., J., R. Sandvik and E. Cyman, Deputy Clerks.

A114983     Brimer,  
                 v.  
                 Faygo Beverages Inc. et al.  
Cause called and argued by David Scott Lavine, counsel for appellant, and by Stephen M. Caine, counsel for respondent. Cause ordered submitted.

A114995     Associated Reproduction Services Inc.,  
                 v.  
                 Carcione.  
Cause called and argued by Aaron Benjamin Markowitz, counsel for appellant, and by Allen Kent Brown, counsel for respondent. Cause ordered submitted.

A114241     Roa,  
                 v.  
                 Department of Justice.  
Cause called and argued by Gary Steven Garfinkle, counsel for appellant, and by Lyn Harlan, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Gemello left the bench and Justice Needham entered.

A110506     The People,  
                 v.  
                 Leonce.  
Cause called and argued by Eric Stephen Multhaup, counsel for appellant, and by Sharon Wooden, counsel for respondent. Cause ordered submitted.

A115448     The People,  
                 v.  
                 Juan Bernal.  
Cause called and argued by Kari E. Hong, counsel for appellant, and by Michael Banister, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons left the bench and Justice Gemello entered.

113201      The People,  
                 v.  
                 Peter Navarro.  
                 Cause called and argued by Charles M. Bonneau Jr., counsel for appellant, and by Gregg Zywicke, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Gemello left the bench and Justice Simons entered.

A113883      Sagonowsky,  
A116818      v.  
                 Kekoa.  
                 Cause called and argued by Curtis Kekoa, appellant, and by Christina Sagonowsky, respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Gemello entered.

A116774      Fields,  
                 v.  
                 Perkins.  
                 Cause called and argued by Jonathan S. Chase, counsel for appellant, and by Omar Julian Krashna, counsel for respondent. Cause ordered submitted.

Court recessed at 12:18 p.m.

Wednesday, September 19, 2007

Division One

**A113874 – The People v. Derran Smiley.**

The judgment of conviction is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J.(Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Wednesday, September 19, 2007

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer Ching and I. Santos, Deputy Clerk.

- A116520      The People,  
                 v.  
                 Temple Lee Stuart.  
Cause called and argued by Michael Satris, counsel for appellant, and Martin S. Kaye, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A115023      The People,  
                 v.  
                 Harry Woodrow Schader, III.  
Cause called and argued by Ave Cristina Mince-Didier, counsel for appellant, and Seth K. Schalit, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A116343      Francine Zelsman-Kerdman,  
                 v.  
                 WWMR Inc. et al.  
Cause called and argued by Alexander Koret Abraham, counsel for appellant, and Gordon John Fine, counsel for respondent. Appellant allowed to file supplemental letter brief within 5 days; respondent 5 days thereafter to file supplemental response brief. Cause to be submitted in 10 days.
- A113662      Mohammad Kashmiri,  
                 v.  
                 The Regents of the University of California.  
Cause called and argued by Ethan P. Schulman, counsel for appellant, and Andrew Freeman, counsel for respondent. Cause ordered submitted.
- At this point of the proceedings, the bench took a five minute recess.
- A116231/  
A116462      David Bakkie,  
                 v.  
                 Union Carbide Corporation.  
Cause called and argued by James Stengel, counsel for appellant, and Gilbert

Purcell, counsel for respondent. Cause ordered submitted.

A115419

The People,

v.

Waldo Sandoval.

Cause called and argued via teleconference by Violet Elizabeth Grayson, counsel for appellant, and Moe Jamil, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, September 19, 2007

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Officer Chambers and I. Santos, Deputy Clerk.

A105399      The People,  
                 v.  
                 Robert Allen Wigley, Jr.  
Cause called and argued by John Francis McCabe II, counsel for appellant, and John Deist, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Lambden left the bench and Justice Haerle joined the bench for the remainder of the calendar.

A115786      In re the Marriage of Myrna Dolores Banks and Craig Anthony Banks.  
                 Myrna Dolores Banks,  
                 v.  
                 Craig Anthony Banks.  
Cause called and argued by Milton Katz, counsel for appellant, and Robert M. Sellards, counsel for respondent. Cause ordered submitted.

A115674      Friends of Bay Meadows et al.,  
                 v.  
                 City of San Mateo et al.;  
                 Bay Meadows Land Company.  
Cause called and argued by Stuart Flashman, counsel for appellant, Brenda Carlson, counsel for respondent Warren Slocum, Robin Johansen, counsel for intervener Bay Meadows Land Company, and Shawn M. Mason, counsel for respondent/cross-appellant City of San Mateo. Cause ordered submitted.

A115503      Suzanne Flecker et al.,  
                 v.  
                 Norma Gomes et al.;  
                 Friends of Bay Meadows.

Cause called and argued by Robin Johansen, counsel for appellant, and Stuart Flashman, counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED.**

Wednesday, September 19, 2007 (continued)

Division Three

**A112065 – The People v. Allie James Bell.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

**A11217 – Lake Berryessa Enterprises, Inc., II v. Robert W. Petty et al.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A115466 – Liza Lasser v. City and County of San Francisco et al.; IBM Personal Pension Plan et al., R.P.I.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

**A112128 – Lake Berryessa Enterprises, Inc., II v. Robert W. Petty et al.**

The trial court's order is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A116823 – In re Tabari A., a Person Coming Under the Juvenile Court Law. The People v. Tabari A.**

The juvenile court orders are affirmed. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

**A116977 – The People v. Ruben Alvarez Villafan.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A116768 – The People v. William Edward Preston May.**

The order extending May's involuntary commitment pursuant to section 2972, subdivision (c) is affirmed; however, the case is remanded for the trial court to make further findings pursuant to section 2972, subdivision (d) regarding whether there is reasonable cause to believe May can be safely and effectively treated on an outpatient basis. McGuiness, P.J. We Concur: Siggins, J., Horner, J.\* (Certified for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, September 19, 2007 (continued)

Division Three

**A112477 – The People v. Chris Thomas Gilbreth.**

The conviction for possession of a firearm by a convicted felon is reversed. Defendant's sentence is vacated and the case is remanded for resentencing. The judgment is otherwise affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Horner, J. \* (Not for Publication.)

**A118612 – Georgette M. v. The Superior Court of Contra Costa; Contra Costa County Department of Children & Family Services et al., R.P.I.**

The order to show cause is discharged and the petition for writ of extraordinary writ is denied on the merits. (See § 366.26, subd. (I); Cal. Rules of Court, rule 8.452(i); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 8.264(b).) Siggins, J. We Concur: McGuinness, J., Pollak, J. (Not for Publication.)

**A114717 – The People v. Michael Eric Dieters.**

The judgment is affirmed. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J. \* (Not for Publication.)

Division Four

**A114239 – The People v. Terence Michael Singleton.**

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

**A114554 – Anthony Ponter et al. v. Vintners' Lodge Sonoma LP, et al.**

The judgment is affirmed. Costs to respondents. Simons, Acting P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

**A105385 – The People v. Ceariaco Cabrellis.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, September 19 2007 (continued)

Division Five

**A112921 – The People v. James Isaac Mesa.**

The judgment of conviction is affirmed. However, the matter is remanded to the trial court for correction of the errors identified in section II.C. of our opinion dated June 15, 2007. After making those corrections, the trial court must forward an amended abstract of judgment to the Department of Corrections. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, September 20, 2007

Division One

**A114454 – The People v. David Desie Revello.**

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

**A116681 – In re Brandon T., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau v. Oscar G.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

Division Three

**A116420 – Jacqueline T. et al. v. Alameda County Child Protective Services et al.**

The judgment is affirmed. Horner, J.\* We Concur: Pollak, Acting P.J., Siggins, J. (Certified for Publication.)

**A116262 – Regina Birkner et al. v. Kwai Ho Lam.**

The order denying defendant's motion to strike is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion. Defendant shall recover his costs on appeal. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

**A115236 – The People v. Tery Ty Griffey.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, September 20, 2007 (continued)

Division Four

**A105905 – The People v. Vincent Tu.**

By the Court: Oder Modifying Opinion. On the court's own motion, it is ordered that the opinion filed herein on August 27, 2007, be modified as follows: (See order.) There is no change in the judgment. Appellant's petition for rehearing is denied. Ruvolo, P.J. (Certified for Publication.)

**A114371 – Clear Channel Outdoor, Inc. v. Advertising Display Services et al.**

The judgment is affirmed. Sepulveda, J. I Concur: Reardon, Acting P.J. (See Dissenting Opinion by Rivera, J.) (Not for Publication.)

**A115520 – Virginia Smith v. Edwin D. Hatter, et al.**

The judgment is affirmed in part and reversed in part. The trial court's order granting summary judgment as to appellant's breach of fiduciary duty cause of action is affirmed. The trial court's order granting summary judgment and denying appellant's request to dismiss without prejudice her causes of action for professional negligence, breach of contract, and constructive fraud is reversed. Each side shall bear its own costs incurred on appeal. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

**A115448 – The People v. Juan Bernal.**

The judgment is affirmed. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A116751 – In re J.R., a Person Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. R.R.**

The order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Friday, September 21, 2007

Division Three

**A114120 – County of Solano v. Paul Handlery, Individually and as Trustee, etc.**

The order granting summary judgment in County's favor is reversed. Horner, J.\* We Concur: McGuiness, P.J., Siggins, J. (Certified for Publication.)

Division Four

**A118955 – The People of the State of California v. The Superior Court of San Francisco County; Qi Xin Kuang, R.P.I.**

Therefore, let a peremptory writ of mandate issue commanding respondent superior court to proceed with the criminal case without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses. This decision is final immediately as to this court (Cal. Rules of Court, rule 8.264(b)(3)), and the writ and the remittitur shall issue within three court days after the filing of this decision pursuant to section 1511. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A117285 – The People v. Jesus Arias Mendoza.**

There are no meritorious issues to be argued on appeal. The judgment is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

**A110286 – The People v. Clinton Brian Wilson et al.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A113404 – The People v. Demetrius Chafford.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A115417 – The People v. Mark Anthony Lozada.**

The judgment is affirmed. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, September 21, 2007

Division Five

**A114212 – The People v. Michael Alan Wiles.**

The trial court judgment is affirmed. Gemello, J. We Concur: Simons, Acting P.J., Needham, J.(Not for Publication.)

**A114241 – Robert Roe v. Department of Justice.**

The trial court judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Monday, September 24, 2007

Division One

**A115092 – County of Alameda v. Benjamin D. Agustin.**

The trial court's judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A115731 – The People v. Adrienne Patterson.**

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A112739 – The People v. Mark McCain Lowe.**

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A111442 – Harry J. Curlett, et al. v. San Lorenzo Village Homes Association.**

**A114158 – Harry J. Curlett, et al. v. San Lorenzo Village Homes Association.**

The trial court's judgment and its denial of defendant's motion for attorney fees are affirmed. The parties are to bear their own appellate costs. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Five

**A116422 – In re B. G., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. B. G.**

The order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A112455 – The People v. Mary E. Poteate.**

The trial court is ordered to conduct a new sentencing hearing in accordance with *People v. Sandoval, supra*, 41 Cal.4th 825. In all other respects, our decision filed on August 18, 2006, remains in effect. Jones, P.J. We Concur: Simons, J., Bruiniers, J.\* (Not for Publication.)

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\* Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, September 25, 2007

Division One

**A116591 – The People v. David L. Strong.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A116131 – Maria Montoya v. City and County of San Francisco.**

The trial court's judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A118359 – A. F. v. The Superior Court of the City and County of San Francisco; San Francisco City and County Department of Human Services et al., R.P.I.**

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Rule 8.264(b)(3).) Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A115280 – The People v. Lawrence Gore.**

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A114263 – Harry Allen v. DaimlerChrysler Motors Co. LLC.**

The appeal from the December 16, 2004 statement of decision granting summary adjudication is dismissed. The March 9, 2006 order denying class certification is affirmed. DCMC shall recover its costs on appeal. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A112205 – The People v. Joseph Didasa.**

The decision of the trial court to impose an upper term sentence on count nine is reversed and the matter is remanded to the trial court for resentencing in accordance with this opinion. The judgment is otherwise affirmed. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Tuesday, September 25, 2007 (continued)

Division Three

**A118661 – In re Jesus Lopez, on Habeas Corpus.**

This court may employ the accelerated Palma procedure “when petitioner's entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue.” (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see also *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237 & 1240-1241.) Here there is no debate: petitioner is entitled to a prompt decision from the superior court on his petition challenging the Governor’s overturning his parole decision. Consequently, let a peremptory writ of mandate issue commanding respondent superior court to issue an opinion on petitioner’s petition for writ of habeas corpus, originally filed January 22, 2007, within 30 days of this decision. (See Cal. Rules of Court, rule 4.551(a)(3)(B)(ii).) This decision is final as to this court immediately. (Cal. Rules of Court, rule 8.264 (b)(3).) Horner, J.\* We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

**A117562 – The People v. Jesse Howard Chidester III.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A117947 – The People v. Randy Conk.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

**A114200 – The People v. Jeffery Martin Wolf.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A113611 – Padmanabhan Ramanathan v. Bank of America Corporation.**

The written opinion which was filed on August 30, 2007, has now been certified for publication pursuant to rule 8.1105 (b) of the California Rules of Court, and it is ordered published in the official records. McGuiness, P.J.

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, September 25, 2007 (continued)

Division Four

**A113168 – Capitol People First et al. v. Department of Developmental Services et al, California Association of State Hospital/Parent Councils for the Retarded et al.**

The order denying class certification cannot stand because it was based on improper criteria and incorrect legal assumptions. Had the trial court properly analyzed appellants' theory of recovery and approach, it would have found commonality. Had it understood the type of conflict that will defeat adequacy of representation, it would not have concluded that appellants failed to establish this element. And finally with these proper understandings it would have recognized that the class action was the only way to resolve appellants' claims. Therefore, we reverse the judgment and direct that the trial court certify the class. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Certified for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, September 25, 2007

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer CHP Stephen Umeki, Bailiff.

- A112480      People  
                 v.  
                 Francisco Ortiz  
Cause called. Stephen B. Bedrick argued for appellant Ortiz. Violet Lee argued for respondent. Cause submitted.
- A114670      Jennifer Newsom  
                 v.  
                 Frank Annicelli et al.  
Cause called. In pro per appellant Newsom argued. Peter Brekhus and Henry Renton Rolph argued for respondents. Cause submitted.
- A113242      Conservatorship of the Person of Roy W.  
                 Virginia Maldonado, as Conservator, etc.  
                 v.  
                 North Bay Regional Center  
Cause called. Jan T. Chilton argued for appellant Maldonado. Joseph P. Mascovich argued for respondent. Cause submitted.
- A112059      People  
                 v.  
                 Anthony Clark Gore.  
Cause called. Tim Allen Pori argued for appellants Gore. Allen Crown argued for respondent. Cause submitted.

Court recessed at 11:20am.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, September 25, 2007

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer CHP Vince Chambers, Bailiff.

- A111366      People  
                 v.  
                 Leron Leon Morris  
Cause called. Cynthia A. Thomas argued for appellant Moris. David Baskin argued for respondent. Cause submitted.
- A114658      Elizabeth Fenton Wilson et al.  
                 v.  
                 Sanctuary Investments, Inc.  
Cause called. J. David Nick argued for appellant Sanctuary. Thomas S. Brigham argued for respondents. Cause submitted.

Court adjourned at 2:11 p.m.

Tuesday, September 25, 2007 (continued)

Division Five

**A115479 – In re Joseph L., a Person Coming Under the Juvenile Court Law. The People v. Joseph L.**

The order is affirmed. Simons, Acting P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

Wednesday, September 26, 2007

Division One

**A113183 – The People v. David A. Johnson.**

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A116401 – In re A. S., a Person Coming Under the Juvenile Court Law. M.K. v. San Francisco County Department of Human Services.**

The Department's motion to dismiss this appeal is granted. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A114299 – The People v. David Gilford.**

The judgment is modified to stay the sentences imposed on the charges of burglary, battery, and infliction of unjustifiable mental suffering to a minor (counts 2, 5, and 6). The judgment is affirmed in all other respects. The trial court is directed to prepare an amended abstract of judgment and to forward a copy of the amended abstract of judgment to the California Department of Corrections. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

**A119001 – Darrell Hunter v. The Superior Court of Marin County; The People of the State of California, R.P.I.**

By the Court: We have reached our decision after notice to all parties that we might act by issuing a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) The entitlement to relief is obvious, and there is a compelling urgency to effectuate petitioner's speedy trial rights. (See *Alexander v. Superior Court* (1993) 5 Cal.4th 1218.) Accordingly, let a peremptory writ of mandate issue commanding respondent court to vacate its order continuing petitioner's trial and to make a new and different order reinstating the earlier order setting petitioner's trial for October 18, 2007. Our decision is final as to this court immediately. (See Cal. Rules of Court, rule 8.264(b)(3).) Before Kline, P.J., Lambden, J., and Richman, J. (Not for Publication.)

**A113380 – The People v. Henry Paul Inocencio.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A110730 – The People v. Justin Thomas Jackson Angus.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Wednesday, September 26, 2007 (continued)

Division Two

**A116502 – Brian McGill Isaac v. Department of Motor Vehicles.**

The judgment is reversed. The parties shall bear their own costs. Kline, P.J. We Concur:  
Lambden, J., Richman, J. (Certified for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, September 26, 2007

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, and San Francisco, California. Present: McGuiness, P.J., Siggins, J., and Horner, J., pro tem; and P. Acosta, Deputy Clerk.

A114491    The People,  
              v.  
              Rickey Charles Williams  
Cause called and argued by John Jordan, counsel for appellant, and Nanette Winaker, counsel for respondent. Cause ordered submitted.

A112756    The People,  
              v.  
              Cory Wayne Mosby.  
Cause called and argued by John Alexander Haley, counsel for appellant, and Margo Yu, counsel respondent. Cause ordered submitted.

A114384    Wendell Laidley et al.,  
              v.  
              City of Belvedere et al.,  
Cause called and argued by Ronald Zumbrun and Todd Ratshin, counsels for appellant, and Todd Smith, counsel for respondent. Cause ordered submitted.

A114179    In re Complex Asbestos Litigation  

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              Steven Marc Harowitz,  
              v.  
              Thorpe Insulation Company.  
Cause called and argued by Jane Yee, counsel for appellant, and Gary Brayton, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Pollak joined the bench. Justice Horner left the bench.

A115379    California Correctional Supervisor,  
              v.  
              Steve Westley et al.,  
Causes called and argued by Gary Goyette, counsel for appellants, and Nathan Barankin, counsel for respondent. Cause ordered submitted.

A113553 Patrick Bulmer,  
v.  
Brian Carter, et al.,  
Cause called and argued by Patrick Bulmer, in pro per, and Raymond Barcedo,  
counsel for respondent. Cause ordered submitted.

A116433 James Venhaus,  
v.  
Karen Schultz.  
Cause called and argued by Charles Kinney, counsel for appellant, and David  
Stromberg, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Siggins returned to the bench, and Justice  
Horner left the bench.

A116357 Guardianship of Brandon Hatter- Oyedeji et al., Minors.

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Percy Marie Lacy,  
v.  
Joseph Alabi Oyedeji.  
Cause called and argued by Ozro Childs, counsel for appellant, and Yemi Odesanya,  
counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench and  
Justice pro tem Horner returned to the bench. Justice Pollak presided over the  
remainder of the morning calendar.

A114556 The People,  
v.  
Freddie James Grayson.  
Cause called and argued by Roberta Sara Simon, counsel for appellant, and Rene  
Chacon, counsel for respondents. Cause ordered submitted.

Court Adjourned

Wednesday, September 26, 2007 (continued)

Division Four

**A112297 – The People v. John Paul Sherman.**

We affirm the judgment and sentence. Sepulveda, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A115486 – The People v. Roderick Smith.**

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A116160 – The People v. Joshua Justice Hayes.**

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A114452 – The People v. Mohammed Shamim.**

The judgment is affirmed, with the modification noted in the preceding paragraph. The trial court is ordered to modify its minute order of May 15, 2006, to reflect the fact that defendant was ordered to "pay a supervised probation fee not to exceed \$75 per month as directed by the probation officer." Sepulveda, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A114846 – In re the Marriage of Karen M. Valdez and Norman J. Valdez, Jr. Karen M. Valdez v. Norman J. Valdez, Jr.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Thursday, September 27, 2007

Division One

**A112807 – The People v. Monisha Whigham.**

The judgment is modified to strike the order for defendant to pay a \$170 criminal justice administration fee. The cause is remanded to the trial court with directions to so correct the felony probation order. The judgment is affirmed in all other respects. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A11992 – The People v. Jose Aparicio.**

The matter is remanded to the trial court for resentencing. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A105756 – The People v. Robert S. Hughes.**

Accordingly, the upper term sentence of eight years imposed upon count one is vacated and the case is remanded to the trial court for the limited purpose of conducting sentencing proceedings in accordance with the directives stated in *Blakely*, *Cunningham*, and *Sandoval*. In all other respects the judgment, as previously amended, is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A114305 – Everest Properties II et al. v. Promotheus Development Co., Inc., et al.**

That part of the judgment that imposed a constructive trust and equitable lien is reversed. The trial court is directed to modify the judgment to calculate the award of prejudgment interest at a rate of seven percent rather than ten percent. In all other respects the judgment is affirmed. The parties are to bear their own costs on appeal. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Two

**A116975 – The People v. Constance Miller.**

We remand to the trial court and direct it to calculate defendant's actual and presentence credits forthwith in a manner consistent with this opinion and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Thursday, September 27, 2007 (continued)

Division Three

**A111350 – In re Tony T., a Person Coming Under the Juvenile Court Law. The People v. Tony T.**

The matter is remanded to the juvenile court to declare whether appellant's vandalism offense (§ 594, subd. (b)(1)) is a misdemeanor or felony, as required by section 702 and rules 5.780(e)(5) and 5.790(a)(1). If, upon remand, the court declares the offense to be a misdemeanor, then it shall recalculate the maximum term of confinement under section 726, subdivision (c). In all other respects, the jurisdictional and dispositional orders are affirmed. McGuiness, P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

**A116477 – The People v. Charles Alfred Glasper.**

The judgment is affirmed. McGuiness, P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

**A117793 – The People v. Joel Rivas-Miranda.**

The judgment is affirmed. McGuiness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication.)

**A115329 – In re Anastacia L., a Person Coming Under the Juvenile Court Law. Contra Costa County Children & Family Services Bureau v. Luis L.**

**A118343 – Luis L. v. The Superior Court of Contra Costa County; Contra Costa County Children & Family Services Bureau, R.P.I.**

In the appeal (A115329), the juvenile court's jurisdictional and dispositional orders are affirmed. In the writ proceeding (A118343), the petition challenging the juvenile court's order setting a section 366.26 hearing is denied, and this court's temporary stay of the section 366.26 hearing is dissolved. McGuiness, P.J. We Concur: Pollak, J., Horner, J.\* (Not for Publication.)

**A116769 – Kaiser Foundation Hospitals et al. v. Janet Stanford.**

The order filed on January 4, 2007, granting the preliminary injunction is affirmed. McGuiness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication.)

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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Thursday, September 27, 2007 (continued)

Division Three

**A116803 – The People v. John Anthony Snodgrass.**

The trial court is ordered to prepare an amended abstract of judgment with the following corrections to the abstract filed January 5, 2007: (1) the sentences stated for counts 1A and 2A (violations of Vehicle Code sections 2800.2 and 10851, subdivision (a)) shall be stated as eight months, not eight years; (2) the sentence imposed for count 2A (violation of Vehicle Code section 10851, subdivision (a)) shall be marked "concurrent," not "consecutive"; (3) restitution fines shall be stated as \$1,000 each for Penal Code sections 1202.4, subdivision (b) and 1202.45, not \$400 each; and (4) additional credits of 10 days for actual time served and 4 days for local conduct (Pen. Code, sec. 4019) shall be added to the abstract's listing of credits for time served. In all other respects the judgment is affirmed. McGuiness, P.J. We Concur: Pollak, J., Horner, J.\* (Not for Publication.)

Division Four

**A111689 – The People v. Joseph Everett Johnson, Jr.**

The judgment is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A115612 – In re A. S., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. E. L.**

The order is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A114658 – Elizabeth Fenton Wilson et al. v. Coastal View Associates, LLC et al., Sanctuary Investments, Inc.**

The 2000 judgment is not fatally uncertain on its face and will not be stricken, in whole or part, as void. Accordingly, we affirm the order. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

**A117048 – In re Gabriel B., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Fidel H.**

The appeal is dismissed as moot. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

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Thursday, September 27, 2007 (continued)

Division Five

**A115598 – The People v. Michael Ray Coffman.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Needham, J.(Not for Publication.)

**A114995 – Associated Reproduction Services, Inc. v. Law Offices of Joseph W. Carcione, Jr., etc.**

The judgment is affirmed. Costs to respondent. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Friday, September 28, 2007

Division One

**A112270 – Frank Welch v. Eric Trefelner et al.**

Accordingly, the appeal from the order which granted the motion of respondents to strike the first amended cross-complaint is dismissed as untimely. No other cognizable appeals are before us. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A116764 – The People v. Gary Dwayne Simpson.**

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A115449 – The People v. Michael Patrick Hosier.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A113742 – Alan Konig v. The State Bar of California et al.**

To summarize the conclusions reached above:

1. The doctrine of res judicata bars all claims against the individual defendants acting in their individual capacity.
2. The doctrine of collateral estoppel bars the assertion of the first and second causes of action in the amended complaint, for wrongful constructive discharge and retaliation, against all defendants.
3. The fourth cause of action, for intentional infliction of emotional distress, alleges no conduct outside the exclusive remedy provisions of workers' compensation other than retaliation. To the extent this claim is based on retaliation, it is barred as against all defendants by the doctrine of collateral estoppel.

Accordingly, the trial court's grant of judgment on the pleadings as to the first, second, and fourth causes of action is affirmed as to all defendants. Because the doctrine of res judicata bars the third cause of action, for defamation, as against the individual defendants acting in their individual capacities, the trial court's ruling on that cause of action is affirmed as to those defendants. The trial court's grant of judgment on the pleadings is reversed only as to the third cause of action as against the State Bar and the individual defendants acting in their official capacities.

The parties shall bear their own costs. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Friday, September 28, 2007 (continued)

Division Two

**A111310 – The People v. Shon Jonathon Yates.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

**A114384 – Wendell Laidley et al. v. City of Belvedere et al.**

The judgment is affirmed. Horner, J.\* We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A115972 – The People v. Cardell Newton.**

The judgment is affirmed. McGuiness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication.)

**A115024 – The People v. Kevin Eatmon.**

The judgment is affirmed. Horner, J.\* We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A114556 – The People v. Freddie J. Grayson.**

The judgment is affirmed. Horner, J.\* We Concur: Pollak, Acting P.J., Siggins, J. (Certified for Publication.)

**A117271 – In re Trevor T. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Michelle T.**

The jurisdictional order is affirmed. Pollak, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

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Friday, September 28, 2007 (continued)

Division Three

**A116433 – James Venhaus v. Karen Shultz.**

The judgment is reversed and the matter is remanded for a new trial consistent with the views expressed in this opinion. Pollak, J. We Concur: McGuiness, P.J., Horner, J.\* (Certified for Partial Publication.)

**A115379 – California Correctional Supervisors Organization v. John Chiang, as State Controller, etc., et al.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A114179 – Steven Marc Harowitz v. Thorpe Insulation Company.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

**A116357 – Guardianship of B.H. et al., Minors. Percy L., v. Joseph O.**

The judgment is reversed and the matter is remanded with directions to reconsider the guardianship petition in light of this opinion. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A118817 – In re Bailey C., a Person Coming Under the Juvenile Court Law. Angel C. v. The Superior Court Humboldt County; Humboldt County Department of Health & Human Services, R.P.I.**

The request for stay is denied, and the petition for extraordinary writ is denied on the merits. The decision is final in this court immediately. (California Rules of Court, rule 8.264(b)(3).) Horner, J.\* We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

**A114491 – The People v. Rickey Charles Williams.**

The conviction for false representation of identity to peace officer (Pen. Code, § 148.9, subd. (a)) is reversed and the sentence imposed thereon is stricken. The matter is remanded to the trial court with directions to modify the judgment accordingly, and to forward a copy of a corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed. McGuiness, P.J. We Concur: Siggins, J., Horner, J.\* (Not for Publication.)

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Friday, September 28, 2007 (continued)

Division Three

**A113553 – Patrick Bulmer v. Brian C. Carter, et al.**

The judgment is affirmed. Appellant shall bear costs on appeal. McGuiness, P.J. We Concur: Pollak, J., Horner, J.\* (Not for Publication.)

**A115728 – The People v. Robert Allen Hillmann.**

The judgment is reversed and the matter is remanded. On remand, the trial court is directed to permit appellant to file a motion pursuant to Evidence Code section 1043. If the court determines the affidavits presented establish good cause for the discovery sought, the court shall conduct an in camera review of documents provided by the police department in accordance with the guidelines for reviewing *Pitchess* motions. (See Evid. Code, § 1045; *People v. Mooc, supra*, 26 Cal.4th at pp. 1226-1227.) If the in camera review reveals the existence of relevant, discoverable information, the court shall grant the discovery and allow appellant an opportunity to demonstrate prejudice. The trial court shall order a new trial if it determines the denial of discovery was prejudicial. In the event appellant's Evidence Code section 1043 motion does not establish good cause, or the trial court's in camera review reveals no discoverable information, or appellant fails to show prejudice, the judgment herein shall be reinstated and affirmed. (See *People v. Husted, supra*, 74 Cal.App.4th at pp. 419-423.) McGuiness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication.)

Division Four

**A114598 – John Hsu v. California Department of Personnel Administration;  
California Department of Toxic Substances Control, R.P.I.**

By the Court: The petition for rehearing is denied. Ruvolo, P.J.

**A115860 – The People v. Arthur Rohith Abraham.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

**A113572 – The People v. Francisco Dominguez.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

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